

Outdoor Circle v. Harold K.L. Castle Trust Estate
Hawaii App.,1983.

Intermediate Court of Appeals of Hawai'i.

OUTDOOR CIRCLE; Congress of Hawaiian People; Kailua Neighborhood Board; Kailua Community Council; The American Association of University Women, Windward Branch; Social Concerns Committee of the Windward Coalition of Churches; The Lanikai Association; The Hawaii Federation of Garden Clubs, Inc.; Council of Presidents; Representative Faith Evans; Arthur R. Beaumont; Hope Gray Miller; and Department of General Planning, City and County of Honolulu, Appellants,

v.

HAROLD K.L. CASTLE TRUST ESTATE; Harold K.L. Castle; Henry H. Wong; Michael C. Baldwin Trust, et al.; State of Hawaii, Land Use Commission; and State of Hawaii, Department of Planning and Economic Development, Appellees.

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT, STATE OF
HAWAII, Appellant,

v.

LAND USE COMMISSION, State of Hawaii; Harold K.L. Castle, et al.; Department of General Planning, City and County of Honolulu; and The Ad Hoc Committee for Kawainui, Appellees.

SHORELINE PROTECTION ALLIANCE; Outdoor Circle; Congress of Hawaiian People; Environmental Education Association of Hawaii; Hawaiian Trail & Mountain Club; Kailua Neighborhood Board; Kailua Community Council; Kaneohe Community Council; The Kailua, Hawaii Branch of the American Association of University Women; Social Concerns Committee of the Windward Coalition of Churches; The Lanikai Association; The Hawaii Federation of Garden Clubs, Inc.; The Maunawili Community Association; Council of Presidents Policy Committee; Representative Faith P. Evans; Representative Andrew K. Poepoe; Dorothy Babineau; Arthur R. Beaumont; Hope M. Gray Miller; and Manuel N. Sproat, Appellants,

v.

HAROLD K.L. CASTLE TRUST ESTATE; Harold K.L. Castle; Henry H. Wong; Michael C. Baldwin Trust, et al.; State of Hawaii, Department of Planning & Economic Development; State of Hawaii, Land Use Commission; and Department of General Planning, City and County of Honolulu, Appellees.

Nos. 8554, 9025.

Dec. 9, 1983.

Petition was filed by State Department of Planning and Economic Development (DPED) requesting reclassification of 244.15 acres from urban to conservation land. The Land Use Commission denied the petition, and DPED appealed, as did other intervening parties. The First Circuit Court, Honolulu County, Arthur S.K. Fong, J., affirmed the Commission's decision and order, except as to 70.78 acres of marshland, which matter was remanded. On remand, the Commission designated the 70.78 acres as conservation land, and DPED and other intervening

parties appealed. The Circuit Court affirmed, and the DPED and intervening parties again appealed. The Intermediate Court of Appeals, Tanaka, J., held that: (1) adjudicatory functions of the Commission include adoption of conclusions of law; thus, the sunshine law required Commission to disseminate the draft and conclusions of law regarding whether to reclassify land and adopt them at an open meeting; (2) Commission's failure to adopt such conclusions of law at an open meeting was not a "wilful" violation of the sunshine law, and thus, such conclusions of law were not voidable; and (3) requirement that an agency incorporate in its decision a ruling upon each proposed finding of fact did not require that the Commission make a separate ruling on each proposed finding of fact where its findings were reasonably clear and impliedly rejected all others.

Affirmed.

Certiorari denied, Haw., 677 P.2d 965.

West Headnotes

[1] Zoning and Planning 414 ⚙️29.5

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(A) In General

414k29.5 k. Maps, Plats, or Plans, Requirements in General. Most Cited Cases
Land Use Commission is empowered to group contiguous land areas into one of four major land use districts: urban, rural, agricultural, and conservation. HRS § 205-2.

[2] Zoning and Planning 414 ⚙️151

414 Zoning and Planning

414III Modification or Amendment

414III(A) In General

414k151 k. Power to Modify or Amend in General. Most Cited Cases
Land Use Commission has authority to reclassify land use by changing district boundaries in accordance with statutory procedural and substantive requirements. HRS § 205-4.

[3] Administrative Law and Procedure 15A ⚙️741

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak741 k. In General. Most Cited Cases

Applicable standards of review of an administrative agency's decision by circuit court are the standards set forth in state statutes. HRS § 91-14(g).

[4] Administrative Law and Procedure 15A ⚙️749

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak749 k. Presumptions. Most Cited Cases

In review of an agency's decision, presumption of validity is accorded to decision of an administrative body acting within its sphere of expertise.

[5] Zoning and Planning 414 ⚔744

414 Zoning and Planning

414X Judicial Review or Relief

414X(E) Further Review

414k744 k. Record, Assignment of Errors, and Briefs. Most Cited Cases

Circuit court which did not hear new evidence in proceeding to review agency decision denying reclassification of land from urban to conservation was in no better position to review agency action than the Intermediate Court of Appeals; thus, the latter had to look at the record compiled before the administrative agency itself. HRS § 91-15.

[6] Administrative Law and Procedure 15A ⚔683

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak681 Further Review

15Ak683 k. Scope. Most Cited Cases

Appellate court's review of circuit court's review of an administrative agency's decision is based on the right/wrong standard; in order to determine whether the circuit court's decision was right or wrong, the appellate court must apply statute setting forth applicable standards of review of an agency's decision by a circuit court. HRS §§ 91-14(g), 91-15.

[7] Zoning and Planning 414 ⚔359

414 Zoning and Planning

414VII Administration in General

414k358 Procedure

414k359 k. Notice, Hearing, and Evidence. Most Cited Cases

Sunshine law requires open deliberation of adjudicatory functions of the Land Use Commission. HRS § 92-6(b).

[8] Zoning and Planning 414 ⚔361

414 Zoning and Planning

414VII Administration in General

414k358 Procedure

414k361 k. Findings and Record. Most Cited Cases

Adjudicatory functions of the Land Use Commission include adoption of conclusions of law, to be included in agency decision in light of statute which requires an agency's decision and order to be accompanied by separate findings of fact and conclusions of law; thus, sunshine law, which requires open deliberation of adjudicatory functions of the Land Use Commission,

requires the Commission, at the least, to disseminate drafted conclusions of law and adopt them at an open meeting. HRS §§ 91-12, 92-6(b).

[9] Administrative Law and Procedure 15A ➡ 124

15A Administrative Law and Procedure

15AII Administrative Agencies, Officers and Agents

15Ak124 k. Meetings in General. Most Cited Cases

An agency decision made in violation of the sunshine law is voidable only upon proof of wilful violation. HRS § 92-11.

[10] Zoning and Planning 414 ➡ 194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Where the Land Use Commission carried out mandates of sunshine law throughout its proceedings to determine whether to reclassify 244.15 acres of land from urban to conservation, giving required notices and holding five public hearings and three public action meetings, but failed to hold meeting to adopt conclusions of law because it viewed this as a housekeeping function and assumed that the sunshine law did not apply, it did not “wilfully” violate sunshine law; thus, its conclusions of law were not voidable. HRS § 92-11.

[11] Zoning and Planning 414 ➡ 194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Since Land Use Commission did not “wilfully” violate sunshine law by failing to draft conclusions of law concerning whether to reclassify land from urban to conservation, and by failing to adopt such conclusions at an open meeting, such conclusions of law were not voidable, despite fact that parties were not able to present argument concerning such conclusions, which was a right protected by statute. HRS §§ 91-9(a, c), 91-10(3), 92-11.

[12] Zoning and Planning 414 ➡ 194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Where parties in proceeding to determine whether to reclassify land from urban to conservation presented evidence for five full days of public hearings, made respective closing statements and commented on the Land Use Commission's deliberations on proposed findings and responses thereto, and eventually started to reargue their respective positions, the Commission order forbidding parties from making any further comments unless specifically requested to do so was not a violation of statute providing that all parties shall be afforded an opportunity for hearing after reasonable notice, and an opportunity to present evidence and argument on all issues involved. HRS § 91-9(a, c).

[13] Zoning and Planning 414 ⚡194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Land Use Commission order, at proceeding to determine whether to reclassify 244.15 acres of land from urban to conservation, directing parties to stop cross-examination of a witness was proper, where transcript contained several pages of cross-examination of the witness conducted by parties concerned, and where testimony was unduly repetitious. HRS § 91-10(1, 3).

[14] Zoning and Planning 414 ⚡624

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k624 k. Matters or Evidence Considered. Most Cited Cases

Zoning and Planning 414 ⚡745.1

414 Zoning and Planning

414X Judicial Review or Relief

414X(E) Further Review

414k745 Scope and Extent of Review

414k745.1 k. In General. Most Cited Cases

(Formerly 414k745)

Since record of proceeding on whether to reclassify 244.15 acres of land from urban to conservation contained no evidence to support claim that there was no quorum present when Land Use Commission rejected various of plaintiffs' proposed findings of fact, other than an affidavit by plaintiffs' counsel which stated that a commissioner had left the room during the debate which involved action on such proposed findings of fact, plaintiffs' claim was properly not considered by circuit court, and would not be considered by the Intermediate Court of Appeals.

[15] Zoning and Planning 414 ➞ 625

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k625 k. Harmless Error. Most Cited Cases

Even if there was no quorum present when Land Use Commission rejected plaintiffs' proposed findings of fact in proceeding to determine whether to reclassify land from urban to conservation, plaintiffs who had admitted that the findings were uncontested were not prejudiced thereby.

[16] Administrative Law and Procedure 15A ➞ 486

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak484 Findings

15Ak486 k. Sufficiency. Most Cited Cases

An agency's decision and order in a contested case must be in writing, and if any party has filed proposed findings of fact, the agency must incorporate in its decision a ruling upon each proposed finding so presented. HRS § 91-12.

[17] Zoning and Planning 414 ➞ 194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Requirement that agency incorporate in its decision a ruling upon each proposed finding of fact filed by any party does not require that there be a separate ruling on each proposed finding of fact, although the agency must make its findings reasonably clear; thus, failure of Land Use Commission, in proceeding to determine whether to reclassify 244.15 acres of land from urban to conservation, to rule separately on each proposed finding filed by plaintiffs was not error, as the Commission made and incorporated reasonably clear findings, and by choosing such findings, impliedly rejected all others. HRS § 91-12.

[18] Zoning and Planning 414 ➞ 194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Land Use Commission's findings of fact, in proceeding to determine whether to reclassify 244.15 acres from urban to conservation, which findings concerned adjoining marshland and its ecological significance, were superfluous to conclusions of law and order dealing with subject property, except to that part reclassified to conservation because it was marshland; thus, such superfluous findings did not contradict Commission's conclusions of law regarding subject property.

[19] Zoning and Planning 414 ↪194.1

414 Zoning and Planning

414III Modification or Amendment

414III(B) Manner of Modifying or Amending

414k194 Notice and Hearing

414k194.1 k. In General. Most Cited Cases

(Formerly 414k194)

Land Use Commission decision and order referring to Exhibit A, a map on which the Commission had outlined a newly classified area and designated it in the legend as "reclassified to conservation," sufficiently evidenced the reclassification of 70.78 acres to conservation use.

Administrative Law and Procedure 15A ↪463.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak463 Witnesses

15Ak463.1 k. In General. Most Cited Cases

(Formerly 15Ak463)

HRS chapter 91, Hawaii Administrative Procedure Act, does not preclude an administrative agency from disallowing repetitious arguments and cross-examination.

Administrative Law and Procedure 15A ↪484.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak484 Findings

15Ak484.1 k. In General. Most Cited Cases

(Formerly 15Ak484)

A separate ruling on a party's proposed findings of fact in the agency's decision is not required by HRS § 91-12.

Administrative Law and Procedure 15A ↪490

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak489 Decision

15Ak490 k. Conformity to Pleadings, Evidence and Findings. Most Cited Cases
Superfluous findings of fact do not create a contradiction between the agency's findings and conclusions of law.

****787** *Syllabus by the Court*

1. ***634** The applicable standards of review of an administrative agency's decision by a circuit court are the standards set forth in Hawaii Revised Statutes (HRS) § 91-14(g).

2. In the review of an agency's decision, a presumption of validity is accorded to a decision of an administrative body acting within its sphere of expertise.

3. ***635** An appellate court's review of the circuit court's review of an administrative agency's decision is based on the right/wrong standard. In order to determine whether the circuit court's decision was right or wrong, the appellate court must apply HRS § 91-14(g) to the agency's decision.

4. HRS chapter 92, Hawaii's Sunshine Law, requires open deliberation of the adjudicatory functions of the Land Use Commission.

5. The adjudicatory functions of the Land Use Commission include the adoption of conclusions of law to be included in the agency decision. Hawaii's Sunshine Law requires the Land Use Commission, at the least, to disseminate the drafted conclusions of law and adopt them at an open meeting.

6. An agency decision made in violation of the Sunshine Law is voidable only upon proof of wilful violation.

7. HRS chapter 91, Hawaii Administrative Procedure Act, does not preclude an administrative agency from disallowing repetitious arguments and cross-examination.

8. A separate ruling on a party's proposed findings of fact in the agency's decision is not required by HRS § 91-12.

9. Superfluous findings of fact do not create a contradiction between the agency's findings and conclusions of law.

***646** Jack F. Schweigert, Honolulu (Earl Ignatius Gettelfinger, Honolulu, with him on the reply brief; Schweigert & Associates, Honolulu, of counsel), for appellants Outdoor Circle, et al.

Benjamin M. Matsubara, Honolulu (Mervyn M. Kotake, Honolulu, with him on the brief; Ukiyama & Matsubara, Honolulu, of counsel), for appellee Land Use Com'n, State of Hawaii.

Lloyd Y. Asato, Honolulu (Morio Omori, Honolulu, with him on the brief), for appellees Harold K.L. Castle Trust Estate, Harold K.L. Castle, Henry H. Wong, Michael C. Baldwin Trust, et al.

Before BURNS, C.J., TANAKA, J., and RONALD B. GREIG, Circuit Judge, in place of HEEN, J., Recused.

TANAKA, Judge.

These appeals are from the April 17, 1979 order entered in the consolidated case of First Circuit Court Civil Nos. 54296 and 54303, which constitute our No. 9025, and from the November 4, 1981 decision filed in First Circuit Court Civil No. 59608, which is our No. 8554. The order and decision, in essence, affirmed the decisions and orders of the Land Use Commission (LUC) denying the reclassification of 244.15 acres of land located at Kailua, Oahu, near the Kawainui Marsh (subject property), from urban to conservation, except as to 70.78 acres of marsh lands.

Although many parties, including the State Department of Planning and Economic Development (DPED) and Department of General Planning of the City and County of Honolulu *636 (DGP), appealed LUC's decisions and orders to the circuit court, only twelve appellants are before us in these appeals. They are the Outdoor Circle; Congress of Hawaiian People; Kailua Neighborhood Board; Kailua Community Council; The American Association of University Women, Windward Branch; Social Concerns Committee of the Windward Coalition of Churches; The Lanikai Association; The Hawaii Federation of Garden Clubs, Inc.; Council of Presidents; Representative Faith Evans; Arthur R. Beaumont; and Hope Gray Miller (collectively the appellants).

The questions raised on appeal are (1) whether the circuit court erred in holding **788 that LUC committed no reversible procedural errors, and (2) whether the circuit court erred in concluding that LUC made no reversible substantive errors in its decisions and orders. We answer no to both questions and affirm.

[1][2] On October 12, 1976, DPED filed with LUC its petition requesting reclassification of the subject property ^{FN1} from urban to conservation. ^{FN2} Pursuant to Hawaii Revised Statutes (HRS) § 205-4(e)(1) (1976), DPED and DGP were mandatory parties in the proceeding. As owners of portions of the subject property, Harold K.L. Castle Trust Estate, Harold K.L. Castle, Henry H. Wong, and Michael C. Baldwin Trust (collectively *637 Castle) were admitted as parties in the proceeding upon their intervention as permitted by HRS § 205-4(e)(3). Under the provisions of HRS § 205-4(e)(4), appellants and other parties were permitted to intervene.

FN1. The subject property was classified urban in 1964. On September 13, 1974, the City and County of Honolulu (City) requested that the subject property be reclassified to conservation so that City could proceed with its planned development of a regional park. City already owned the approximately 750 acres of conservation land constituting the Kawainui Marsh. On October 29, 1974, the Land Use Commission (LUC) filed a petition to change the land use of the subject property under its five-year boundary review procedure. The following year, the petition was refiled under the newly adopted quasi-judicial contested cases provision of Hawaii Revised Statutes (HRS) chapter 91. LUC's petition was withdrawn, however, when the State Department of Planning and Economic Development (DPED) suggested that DPED would be the more appropriate party to initiate the action.

FN2. LUC is empowered to group contiguous land areas into one of the four major

land use districts: urban, rural, agricultural, and conservation. HRS § 205-2 (1976 & Supp.1982). LUC also has authority to reclassify the land use by changing district boundaries in accordance with statutory procedural and substantive requirements. HRS § 205-4 (1976). *See Neighborhood Board v. State Land Use Commission*, 64 Haw. 265, 639 P.2d 1097 (1982).

Between March and September 1977, LUC held a pre-hearing conference and five full-day hearings and all mandatory and intervening parties presented evidence. In January 1978, LUC held three public action meetings and adopted specific findings of fact. At the last public action meeting, LUC voted 5 to 2 to deny the petition. Subsequently, conclusions of law were adopted, and on March 7, 1978, a decision and order was filed.

On April 5, 1978, DPED appealed LUC's decision and order to the circuit court in Civil No. 54296. On April 6, 1978, appellants and other intervening parties likewise appealed to the circuit court in Civil No. 54303, in which DGP joined. On April 17, 1979, in the consolidated case of Civil Nos. 54296 and 54303, the circuit court entered its order affirming LUC's decision and order in all particulars, except as to the marsh portions of the subject property which should have been reclassified as conservation. The circuit court remanded the matter to LUC for the limited purpose of determining the boundary of the marsh acreage of the subject property.

On May 16, 1979, appellants and certain other intervening parties filed their notice of appeal from the circuit court's April 17, 1979 order. On February 19, 1981, this court dismissed the appeal for lack of appellate jurisdiction.

In the interim, on May 30 and June 26, 1979, LUC held additional hearings on the remanded matter. On October 3, 1979, LUC filed its decision and order determining that 70.78 acres or 28.99 percent of the subject property constituted marsh lands and appended to its order a map delineating the newly designated conservation lands.

On November 5, 1979, appellants and other intervening parties appealed LUC's October 3, 1979 decision and order to the circuit court in Civil No. 59608.^{FN3} On November 4, 1981, the ***638** circuit court affirmed LUC's October 3, 1979 decision and order. Appellants' timely appeals from the circuit court's November 4, 1981 decision in Civil ****789** No. 59608 and April 17, 1979 order in the consolidated case of Civil Nos. 54296 and 54303 followed.

FN3. In Civil No. 59608, the City Department of General Planning realigned itself as a party appellant. However, DPED did not participate in the case.

I.

Since the parties disagree concerning the standard of review applicable to these appeals, we will discuss this matter at the outset.

[3] The applicable standards of review of an agency's decision by the circuit court are set forth in Hawaii Revised Statutes (HRS) § 91-14(g) (1976). *Aio v. Hamada*, 66 Haw. 401, 664 P.2d 727 (1983); *McGlone v. Inaba*, 64 Haw. 27, 636 P.2d 158 (1981); *Foster Village Com-*

munity Ass'n v. Hess, 4 Haw.App. 463, 667 P.2d 850 (1983). HRS § 91-14(g) consists of six separate subsections^{FN4} to be applied to the “findings, conclusions, decisions, or orders” of an administrative agency. To reverse or modify an agency's decision and order, HRS § 91-14(g) requires a finding that an appellant's “substantial rights ... may have been prejudiced” under one of the six subsections. Under HRS § 91-14(g), conclusions of law are reviewable under subsections (1), (2), and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection*639 (5); and an agency's exercise of discretion under subsection (6).

FN4. HRS § 91-14(g) reads:

Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

[4] Furthermore, a review of an agency's decision is always tempered by the precept that:

In order to preserve the function of administrative agencies in discharging their delegated duties and the function of this court in reviewing agency determinations, a presumption of validity is accorded to decisions of administrative bodies acting within their sphere of expertise and one seeking to upset the order bears “the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.”

In re Hawaii Electric Light Co., Inc., 60 Haw. 625, 630, 594 P.2d 612, 617 (1979) (quoting *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 64 S.Ct. 281, 288, 88 L.Ed.2d 333, 345 (1944), quoted in *In re Kauai Electric Division of Citizens Utilities Co.*, 60 Haw. 166, 187, 590 P.2d 524, 583 (1978)). See also *Hawaii Public Employment Relations Board v. United Public Workers*, 66 Haw. 461, 667 P.2d 783 (1983); *Waikiki Resort Hotel, Inc. v. City & County*, 63 Haw. 222, 624 P.2d 1353 (1981).

In this case, the question is what standard applies to an appellate court's review of the circuit court's review of the agency's decision. This “secondary” appeal is governed by HRS § 91-15 (Supp.1982) which steers the appeal through HRS chapter 602. In turn, HRS § 602-5(1) (Supp.1982) gives the appellate court jurisdiction and power^{FN5} to “hear and determine all questions of law, or of mixed law and fact, which are properly brought before it on any appeal allowed by law from any court or agency.”

FN5. HRS § 602-57 (Supp.1982) provides that this court “shall have concurrent jurisdiction with the supreme court on all matters set out in section 602-5(1) through (7),

subject to assignment of cases set out in section 602-5(8).”

[5] Neither our statutes nor reported cases clearly define the standard of review on the secondary appeal. However, since the circuit court did not hear new evidence in the proceedings, *640 it is “in no better position to review agency action than this **790 court.” *Committee for an Independent P-I v. Hearst Corp.*, 704 F.2d 467, 472 (9th Cir.1983). See also *Deuter v. South Dakota Highway Patrol*, S.D., 330 N.W.2d 533 (1983). Thus, we must look at the record “compiled before the administrative agency itself.” *Application of Nebraska Public Power Dist.*, N.D., 330 N.W.2d 143, 147 (1983). See also *Unified School Dist. No. 461 v. Dice*, 228 Kan. 40, 612 P.2d 1203 (1980).

In *Homes Consultant Co., Inc. v. Agsalud*, 2 Haw.App. 421, 633 P.2d 564 (1981), and *Foodland Super Market, Ltd. v. Agsalud*, 3 Haw.App. 573, 656 P.2d 100 (1982), we stated that our secondary review of the circuit court's initial review is governed by the clearly erroneous standard of Rule 52(a), Hawaii Rules of Civil Procedure (1981). In light of our holding below, we believe we erred.

[6] We hold that our review of the circuit court's review of the agency's decision is based on the “right/wrong standard” defined in *State v. Miller*, 4 Haw.App. 603, 671 P.2d 1037 (1983), and *Davis v. Davis*, 3 Haw.App. 501, 653 P.2d 1167 (1982). In order to determine whether the circuit court's decision was right or wrong, we must also apply HRS § 91-14(g) to the agency's decision. *Aio v. Hamada*, *supra*. Cf. *Survivors of Bennett G. Cariaga v. Del Monte Corp.*, 65 Haw. 404, 652 P.2d 1143 (1982) (although the case dealt principally with statutory construction on certiorari to this court, our supreme court applied HRS § 91-14(g) in its secondary review of our initial review of the agency's decision).

II.

Appellants argue that LUC committed the following reversible procedural errors: (1) it adopted conclusions of law without either a public meeting or any of the parties being present in violation of HRS §§ 92-3 and -6(b) (1976); (2) it precluded appellants from presenting arguments on all issues in violation of HRS § 91-9(a) and (c) (1976) and HRS § 91-10(3) (1976); (3) it rejected certain of appellants' proposed findings without a quorum of the commissioners being present in violation of HRS § 92-15 (1976); and (4) it failed to incorporate*641 in its decision a ruling on each of appellants' proposed findings in violation of HRS § 91-12 (Supp.1982). Therefore, appellants claim that the circuit court erred in upholding LUC's decisions and orders on procedural grounds. We disagree.

A.

Chapter 92, HRS, is popularly known as the Sunshine Law. HRS § 92-3 mandates that “[e]very meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5.”

The record reveals that on January 19, 1978 when the third and last action meeting was held, LUC voted to deny DPED's petition. Commissioner Duke then indicated that the conclusions of law "will be worked on" by LUC and its counsel. Transcript of January 19, 1978 Proceeding at 453. The record is silent as to what occurred thereafter until LUC's decision and order signed by five commissioners was filed on March 7, 1978. We assume that LUC's counsel drafted and incorporated the conclusions of law in the March 7, 1978 order and decision. We also assume that LUC did not convene any meeting to deliberate on and adopt those conclusions.

[7] Although HRS § 92-6(a)(2) provides that the Sunshine Law shall not apply to adjudicatory functions exercised by administrative agencies, *Chang v. Planning Commission*, 64 Haw. 431, 643 P.2d 55 (1982), HRS § 92-6(b) states that the Sunshine Law "shall apply to require open deliberation of the adjudicatory functions of the Land Use Commission." (Emphasis added.) Thus, the crucial question is whether the adoption of the conclusions of law was an adjudicatory function which necessitated a LUC open meeting.

****791** LUC argues that after it had accepted the final version of the findings of fact and voted to deny DPED's petition at open meetings, its adjudicatory functions were concluded. Thereafter, all that remained to be done by LUC's counsel were "legal 'housekeeping' chores" of drafting the conclusions of law "as inferred from the adopted findings of fact," preparing the ***642** decision and order, and obtaining the requisite signatures. LUC's Answering Brief at 14-15. Such "housekeeping chores" were not adjudicatory functions requiring a LUC meeting. We do not agree.

[8] Administrative adjudication has been defined as "any final decision, determination or ruling by an agency affecting personal or property rights." *Ambros v. Philadelphia Civil Service Commission*. 54 Pa.Comm.w. 488, 493, 422 A.2d 225, 227 (1980). Although this definition does not clarify which functions are included, our statute mandates that the "provisions requiring open meetings shall be liberally construed." HRS § 92-1(2). Construing HRS § 92-6(b) liberally, we hold that the adjudicatory functions include the adoption of conclusions of law, especially in the light of HRS § 91-12 which requires an agency's decision and order to be "accompanied by separate findings of fact and conclusions of law." At the least, LUC should have disseminated the drafted conclusions of law and adopted them at an open meeting.

[9][10] However, HRS § 92-11 (1976) provides that an agency decision made in violation of the Sunshine Law is voidable only "upon proof of wilful violation." (Emphasis added.) It is clear from the record that LUC carried out the mandates of the Sunshine Law throughout its proceedings, giving the required notices and holding five public hearings and three public action meetings. It did not hold a meeting to adopt the conclusions of law because it viewed this as a "housekeeping" function and assumed that the Sunshine Law did not apply. Under such circumstances, we hold that there was no wilful violation of the Sunshine Law and the conclusions of law are not voidable.

B.

In contested cases, HRS § 91-9(a) provides that “all parties shall be afforded an opportunity for hearing after reasonable notice,” and HRS § 91-9(c) states that “[o]pportunities shall be afforded all parties to present evidence and argument on all issues involved.” HRS § 91-10(3) accords each party “the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.”

[11] First, appellants contend that because LUC did not adopt *643 the conclusions of law at an open meeting, they were deprived of their right to present argument concerning the conclusions resulting in a violation of HRS § 91-9(a) and (c). Our holding on the Sunshine Law issue above is dispositive of this question.

[12] Second, appellants allege that during the January 19, 1978 action meeting, LUC ordered the parties not to make any further comments unless specifically requested to do so by LUC. They claim that this violated HRS § 91-9(a) and (c). An examination of the record reveals that neither provision was violated. The parties presented evidence at five full days of public hearing and made their respective closing statements. In addition, they were permitted to comment on LUC's deliberations on the proposed findings and responses thereto at the first two action meetings. When it became clear that the parties were merely rearguing their respective positions, LUC ordered them to make no further comments. Such order under those circumstances did not constitute a violation of HRS § 91-9(a) and (c).

[13] Third, appellants argue that LUC's failure to permit complete cross-examination of a certain witness was a violation of HRS § 91-10(3). However, the right claimed by appellants is limited by HRS **792 § 91-10(1) which requires the agency “as a matter of policy [to] provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.” The transcript reveals several pages of cross-examination conducted by both DPED and appellants. Although HRS § 91-10(1) does not give an agency a license to disallow evidence, *Cazimero v. Kohala Sugar Co.*, 54 Haw. 479, 510 P.2d 89 (1973), LUC properly disallowed unduly repetitious testimony. *Waikiki Resort Hotel, Inc. v. City & County, supra*.

C.

Section 92-15, HRS, provides in relevant part:

[A] majority of all the members to which the ... commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the ... commission is entitled shall be necessary to make any action of the ... commission *644 valid[.]

Appellants claim that there was no quorum present when LUC rejected appellants' proposed Findings of Fact Nos. 24 and 25; such action violated HRS § 92-15; and, therefore, its action was invalid.

[14] There is nothing in the record to support appellants on this issue other than the affidavit of appellants' counsel which states that “Commissioner Yanai left the room during the debate which involved ... action on proposed Findings of Facts [sic] Nos. 24 and 25.” Civil No. 54303 Record at 383. The affidavit was attached to appellants' reply brief filed in Civil

No. 54303 and properly was not considered by the circuit court, and we may not either. *See McGlone v. Inaba, supra*.

[15] Even if the facts as stated in the affidavit may be considered, appellants' argument has no merit. Appellants admit that "the Findings of Fact are not contested." Opening Brief at 10. Consequently, there being no prejudice, there is no reversible error.

D.

[16] An agency's decision and order in a contested case must be in writing and HRS § 91-12 provides that if any party has filed proposed findings of fact, "the agency shall incorporate in its decision a ruling upon each proposed finding so presented." ^{FN6} Appellants contend that LUC violated HRS § 91-12 by failing to specify in its decision the disposition of each of appellants' proposed findings.

FN6. The 1980 amendment to HRS § 91-12 did not affect the part quoted in this opinion.

[17] It is not indispensable that there be a separate ruling on each proposed finding of fact. *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 560 P.2d 1292 (1977); *In re Terminal Transportation, Inc.*, 54 Haw. 134, 504 P.2d 1214 (1972); *Freitas v. Pacific Contractors Co.*, 1 Haw.App. 77, 613 P.2d 927 (1980). However, "the agency must make its findings reasonably clear." *In re Terminal Transportation, Inc.*, 54 Haw. at 139, 504 P.2d at *645 1217. In its March 7, 1978 order and decision, LUC made and incorporated reasonably clear findings. By choosing those, it impliedly rejected all others. LUC did not err in doing so.

We find no reversible procedural errors made by LUC and hold that the circuit court was right in upholding LUC's decisions and orders on this ground.

III.

Appellants contend that the findings of fact and the HRS § 205-2 land use district criteria required the reclassification of the subject property from urban to conservation use. Consequently, LUC's conclusion that the subject property did not conform to a satisfactory degree with the criteria for the conservation district, which resulted in the denial of DPED's petition, was substantive error. We do not agree.

****793** [18] We have carefully examined the complete record. Much evidence was presented, but most of it concerned the Kawainui Marsh and not the subject property. Consequently, many of the findings of fact were about the Kawainui Marsh and its ecological significance. Those findings, however, were superfluous to the conclusions of law and order dealing with the subject property, except to the extent that they related to that part reclassified on remand. Based on such analysis, we find no contradiction between the findings and conclusions and no substantive error.

We find that LUC's orders and decisions do not violate any statutory provisions and are

not affected by any errors in law. Therefore, we hold that the circuit court was right in affirming LUC in its denial of DPED's petition, except as to 70.78 acres of marsh lands.

IV.

[19] Finally, appellants contend that LUC's October 3, 1979 decision and order does not evidence the reclassification of the 70.78 acres to conservation use. We disagree.

The order and decision refers to an appended Exhibit "A," a map, on which LUC outlined the newly classified area and designated it in the legend as "reclassified to conservation." Consequently, the order and decision sufficiently evidences the reclassification of the 70.78 acres.

Affirmed.

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